U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0299 BLA

ALVA L. ALVERSON (Widow of ELMER E. ALVERSON) Claimant-Petitioner v. DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Respondent	)	DATE ISSUED: 04/05/2017 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits in a Survivor's Claim of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

Ann Marie Scarpino (Nicholas C. Geale, Acting Solicitor of Labor; Maia Fisher, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits in a Survivor's Claim (2011-BLA-05565) of Administrative Law Judge Joseph E. Kane, rendered pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)

(the Act).[1] The administrative law judge found that the miner worked thirty-four years in surface coal mine employment in conditions that were substantially similar to those found in an underground mine. However, because the administrative law judge determined that the evidence was insufficient to establish that the miner had a totally disabling respiratory or pulmonary impairment, the administrative law judge found that claimant was unable to invoke the rebuttable presumption that the miner's death was due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] The administrative law judge also determined that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding that the miner was not totally disabled and that she was unable to invoke the Section 411(c)(4) presumption. Claimant also argues that the administrative law judge erred in finding that she failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to vacate the denial of benefits because the administrative law judge did not properly consider whether the miner's treatment records contained sufficient information from which to conclude that the miner was totally disabled by a respiratory or pulmonary impairment. Although the Director contends that the case should be remanded for further consideration of whether claimant is entitled to invocation of the Section 411(c)(4) presumption, the Director maintains that the administrative law judge properly found that the evidence was insufficient to establish that the miner's death was due pneumoconiosis pursuant to 20 C.F.R. §718.205(b). In a reply brief, claimant reiterates her arguments.[3]

[1] The record reflects that the miner filed four claims for black lung benefits during his lifetime, each of which was denied. Director's Exhibit 1. The miner died on February 16, 2010. Director's Exhibit 14. Claimant, the widow of the miner, filed her survivor's claim on April 19, 2010. Director's Exhibit 2.

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that the miner's death was due to pneumoconiosis if she establishes that the miner had at least fifteen years of underground coal mine employment, or employment in conditions substantially similar to those in an underground mine, and also suffered from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[3] In light of the concession by the Director, Office of Workers' Compensation Programs, that the miner had thirty-four years of qualifying surface coal mine employment, we affirm, as unchallenged on appeal, the administrative law judge's

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

I. Invocation of Section 411(c)(4) presumption – Total Disability

The regulations provide that a miner will be considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his or her usual coal mine work. 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability is established by: 1) pulmonary function tests showing values equal to or less than those listed in Appendix B to 20 C.F.R Part 718; 2) arterial blood gas studies showing values equal to or less than those listed in Appendix C to 20 C.F.R. Part 718; 3) evidence that the miner has pneumoconiosis and cor pulmonale with right-sided congestive heart failure; or 4) a physician exercising reasoned medical judgment concluding that a miner's respiratory or pulmonary condition is totally disabling. 20 C.F.R. §718.204(b)(2)(i)-(iv). If an administrative law judge finds that total disability has been established under one or more subsections, he or she must weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered four pulmonary function tests dated February 9, 2000, June 16, 2003, January 7, 2009, and March 25, 2009. Decision and Order at 7; Director's Exhibits 19, 20. The administrative law judge found that each of the tests was qualifying for total disability,[5] with the exception of the January 7, 2009 test. Decision and Order at 7. However, the administrative law judge accepted the opinions of Drs. Rosenberg and Tuteur who "both opined the qualifying [pulmonary function tests] are all invalid," and concluded that

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finding to this effect. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Director's Letter Brief at 1 n.2; Decision and Order at 5.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 3.

[5] A "qualifying" pulmonary function test yields values that are equal to or less than the values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" test exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

claimant was unable to establish that the miner was totally disabled based on the pulmonary function testing. *Id*.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv),[6] the administrative law judge considered the miner's treatment records, along with the opinions of Drs. Chaney, Rosenberg, Houser, and Tuteur. The administrative law judge found that while the treatment records contain "a couple of notations of impairment," they do not specifically discuss whether the miner was totally disabled. Decision and Order at 7. The administrative law judge determined that Dr. Chaney did not address the issue of total disability in his report or deposition. *Id*. at 8; Director's Exhibit 21; Claimant's Exhibit 5. Similarly, the administrative law judge found that while Dr. Rosenberg diagnosed hypoxemia, he did not address whether the miner was totally disabled by that condition. Decision and Order at 9; Employer's Exhibit 4.

With regard to Dr. Houser's opinion, the administrative law judge observed that Dr. Houser did not address the validity of the pulmonary function tests or explain how the miner's treatment records supported his opinion that the miner was totally disabled. Decision and Order at 8; Claimant's Exhibit 1. Thus, the administrative law judge concluded that Dr. Houser's opinion was entitled to little weight. Decision and Order at 8.

Addressing Dr. Tuteur's opinion, the administrative law judge found that Dr. Tuteur opined that the miner's January 7, 2009 pulmonary function test was within normal limits but also stated that the miner suffered from "severe exercise intolerance" due to heart disease and "was clearly disabled from returning to work as a coal miner or work requiring similar effort." Decision and Order at 9, *quoting* Employer's Exhibit 3. The administrative law judge found that Dr. Tuteur provided a reasoned and documented opinion that the miner was not totally disabled from a respiratory or pulmonary standpoint. Decision and Order at 9; Employer's Exhibit 3. The administrative law judge therefore found that claimant failed to establish total disability based on the

[6] Because the record contains no arterial blood-gas studies and no evidence indicating that the miner suffered from cor pulmonale with right-sided congestive heart failure, the administrative law judge determined that claimant is unable to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iii). Decision and Order at 5, 7. We affirm the administrative law judge's findings under 20 C.F.R. §718.204(b)(2)(ii), (iii), as they are not challenged on appeal. *Skrack*, 6 BLR at 1-711.

treatment records and medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Claimant challenges the administrative law judge's finding that the miner was not totally disabled. Claimant argues that the administrative law judge erred in finding that the qualifying pulmonary function tests were invalid without explicitly addressing the fact that "[t]he reports themselves state[] the studies are reproducible and meet American Thoracic Society [(ATS)] standards and other language which on the form indicate validity." Claimant's Brief at 16. We agree with claimant that the administrative law judge's findings with regard to the pulmonary function tests are not adequately explained.

The report of the qualifying February 9, 2000 pulmonary function test contains no comments from the technician regarding claimant's effort. Director's Exhibit 20. On the report of the qualifying June 16, 2003 pulmonary function test, the technician noted: "Patient gave good effort and had good understanding of instructions. Spirometry data is acceptable and reproducible. Spirometry meets ATS criteria." *Id*. On the report of the qualifying March 25, 2009 pulmonary function test, the technician indicated: the spirometry data was "acceptable and reproducible;" the miner gave good effort; the miner had good understanding; and the "test should be considered post-bronchodilator" due to [the miner] using [an] inhaler prior to the test." *Id*. In addition, Dr. O'Brien read and signed the report of the March 25, 2009 pulmonary function test, indicating that it was an "[a]bnormal test" showing a "moderate obstructive ventilatory impairment." *Id*.

In weighing the qualifying pulmonary function tests, the administrative law judge did not properly resolve the conflict in the evidence regarding whether the miner's effort was sufficient to produce results indicative of his true pulmonary function. Rather, he summarily discredited the qualifying pulmonary function tests without addressing the comments of the technicians and/or the administering physicians relevant to their reliability.[7] Decision and Order at 7. Because the administrative law judge did not consider all relevant evidence in rendering his finding regarding the validity of the qualifying pulmonary function tests, his decision does not comply with the

[7] The quality standards apply only to evidence developed in connection with a claim for benefits. 20 C.F.R. §718.101(b). Because the three qualifying pulmonary function tests were part of the miner's treatment records, they are not subject to the quality standards set forth at 20 C.F.R. §718.103 and Appendix B to 20 C.F.R. Part 718. 20 C.F.R. §718.101(b); *see J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008). However, the administrative law judge must still determine whether each test is sufficiently reliable to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). *See Stowers*, 24 BLR at 1-89, 1-92.

Administrative Procedure Act (APA).[8] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Accordingly, we must vacate the administrative law judge's finding that claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i).[9] *See Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744, 21 BLR 2-203, 2-211-12 (6th Cir. 1997); *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 231, 18 BLR 2-290, 2-297 (6th Cir. 1994). Furthermore, to the extent that the administrative law judge's discrediting of the qualifying pulmonary function tests influenced the weight he accorded the opinions of Drs. Houser and Tuteur on the issue of total disability, we also vacate the administrative law judge's determination that claimant failed to establish total disability based on the medical opinion evidence under 20 C.F.R. §718.204(b)(2)(iv). *See, e.g., Cornett v. Benham Coal Co.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 218-19, 20 BLR 2-360, 2-374 (6th Cir 1996).

We further agree with the Director that the administrative law judge erred in stating that the miner's treatment records could not support a finding of total disability because they do not contain specific diagnoses of total disability. Contrary to the administrative law judge's analysis, a physician need not phrase his or her opinion in terms of "total disability" in order to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894, 13 BLR 2-348, 2-356 (7th Cir. 1990), *citing Black Diamond Coal Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985) ("[i]t is not essential for a physician to state specifically that an individual is totally impaired. . . ."). The Director correctly points out that "[s]tatements or notes set forth in treatment records regarding limits on a miner's activities due to a pulmonary condition may be relevant to a total disability determination even if the records do not use the phrase "totally disabled" or specifically address the miner's ability to perform his prior coal mine job." Director's

[8] The Administrative Procedure Act, 5 U.S.C. §§500-596, as incorporated into the Act by 30 U.S.C. §932(a), provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A).

[9] Additionally, the administrative law judge stated incorrectly that "*both* [Dr. Tuteur and Dr. Rosenberg] determined that the flow-volume curves revealed incomplete efforts, which is illustrated by the January 2009 non-qualifying test." Decision and Order at 7 (emphasis added). Contrary to the administrative law judge's finding, Dr. Tuteur stated in his April 7, 2015 report that: "[i]t must be recognized that the spirometric studies of February 2000, June 2003, and March 2009 are totally and unequivocally invalid as an assessment of maximum function." Employer's Exhibit 3. Dr. Tuteur did not discuss the flow-volume curves. *Id.*

Letter Brief at 2, *citing Raines*, 758 F.2d at 1534. A medical opinion may support a finding of total disability if it provides sufficient information from which the administrative law judge can reasonably infer that a miner is or was unable to do his last coal mine job.[10] *See Poole*, 897 F.2d at 894, 13 BLR at 2-356; *Scott v. Mason Coal Co*., 60 F.3d 1138, 1142, 19 BLR 2-257, 2-263 (4th Cir. 1995); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

In this case, the treatment and hospitalization records contain observations that the miner: suffered from *severe and/or end-stage chronic obstructive pulmonary disease* (*COPD*); had hypoxemia resulting in a limited ability to walk; experienced hyperinflation of the lungs; had wheezing on physical examination; suffered from dyspnea at night; was dependent on supplemental oxygen; and used inhalers and a lift chair. Director's Exhibits 19 at 12, 17-18, 35, 46, 248-249, 294-296; 20 at 14, 17-18, 35, 46; Claimant's Exhibits 3, 4, 6, 7, 9-14. Based on this review of the record, we conclude that by failing to address whether the treatment and hospitalization records contain sufficient information from which to conclude that the miner had a totally disabling respiratory or pulmonary impairment prior to his death, the administrative law judge has not complied with the APA. *See Wojtowicz*, 12 BLR at 1-165. We therefore vacate the administrative law judge's determination that claimant did not establish that the miner was totally disabled and further vacate his finding that claimant failed to invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4).

On remand, the administrative law judge must reweigh the pulmonary function tests, medical opinions and treatment records and render findings under 20 C.F.R. §718.204(b)(2)(i) and (iv). When reconsidering the pulmonary function tests, he must address all of the evidence relevant to their validity, including direct observations made by medical personnel present at the study, whether a physician or a technician, and the opinion of any physician who assessed claimant's effort by reviewing the results of the study, including the tracings. *See Schetroma v. Director, OWCP*, 18 BLR 1-19, 1-22 (1993); *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985). If the administrative law judge gives greater weight to the opinion of a consulting physician as to the validity of a particular pulmonary function test, he must set forth his rationale. *See Siegel*, 8 BLR at 1-157. Regarding the medical opinions relevant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge must identify the exertional requirements of the miner's usual coal mine work and compare them with any notations regarding the miner's physical

[10] It is claimant's burden to establish the exertional requirements of the miner's usual coal mine employment to provide a basis of comparison for the administrative law judge to evaluate a medical assessment of disability and reach a conclusion regarding total disability. *See Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, *aff'd on recon.*, 9 BLR 1-104 (1986) (en banc); *Cregger v. U.S. Steel Corp.*, 6 BLR 1-1219 (1984).

limitations to reach a conclusion as to whether the miner was totally disabled. *See Cornett*, 227 F.3d at 578, 22 BLR at 2-124; *Ward*, 93 F.3d at 218-19, 20 BLR at 2-374. If the administrative law judge finds that claimant has established total disability under either, or both, subsections at 20 C.F.R. §718.204(b)(2)(i), (iv), he must then weigh all of the evidence together, and reach a conclusion as to whether the miner had a totally disabling respiratory or pulmonary impairment under 20 C.F.R. §718.204(b)(2). *See Shedlock*, 9 BLR at 1-198.

If the administrative law judge finds that claimant has established that the miner was totally disabled, claimant is entitled to the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305. If the presumption is invoked, the administrative law judge must then address whether the Director has established rebuttal by proving that "no part of the miner's death was caused by pneumoconiosis as defined in § 718.201."[11] 20 C.F.R. §718.305(d)(2)(ii). In rendering his findings on remand, the administrative law judge must comply with the APA.

II. Death Causation

In the interest of judicial economy, we address claimant's remaining arguments on appeal regarding the administrative law judge's finding that she failed to establish death due to pneumoconiosis under 20 C.F.R. §718.205(b). When the presumption at Section 411(c)(4) is not applicable, a claimant is required to establish, by a preponderance of the evidence, that the miner had pneumoconiosis arising out of coal mine employment, and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Death is considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, or pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(b)(1), (2). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(b)(6). Failure to establish any one of the required elements precludes entitlement. *See Trumbo*, 17 BLR at 1-87-88.

[11] Pursuant to 20 C.F.R. §718.305(d)(2)(i), the party opposing entitlement can also rebut the presumption by affirmatively disproving the existence of both legal and clinical pneumoconiosis. Rebuttal by this method is precluded in this case based on the administrative law judge's determination that the autopsy evidence was sufficient to establish the existence of clinical pneumoconiosis. Decision and Order at 11.

In this case, when considering the issue of death due to pneumoconiosis under 20 C.F.R. §718.205(b), the administrative law judge addressed the death certificate prepared by Dr. Yeiser. Decision and Order at 11-12; Director's Exhibit 14. Dr. Yeiser identified the immediate cause of the miner's death as "[a]cute blood loss" due to a "GI [gastrointestinal] bleed" and "coronary artery disease." Director's Exhibit 14. The administrative law judge gave no weight to the death certificate as he was unable to determine Dr. Yeiser's credentials. Decision and Order at 12. The administrative law judge also gave little weight to the autopsy report prepared by Dr. Ward because, although Dr. Ward identified clinical pneumoconiosis and emphysema pathologically, he did not address the cause of the miner's death. *Id*.; Director's Exhibit 6.

The administrative law judge also considered the medical opinions of Drs. Chaney, Houser, Rosenberg, and Tuteur.[12] The administrative law judge rejected Dr. Chaney's opinion that the miner's death from a GI bleed was hastened by COPD due to coal dust exposure as not well-reasoned. Decision and Order at 15. Similarly, the administrative law judge found that Dr. Houser did not adequately explain the basis for his opinion that the miner's death was hastened by clinical pneumoconiosis and COPD

[12] The administrative law judge also summarized the records from the miner's terminal hospitalization. Decision and Order at 12-13. The records reflect the following: The miner was admitted to Owensboro Medical Health System (OMHS) on January 4, 2010 for complaints of nausea, vomiting, and dyspnea. Director's Exhibit 19 at 343. The hospital discharged the miner on January 7, 2010, with a primary diagnosis of pneumonia and secondary diagnoses of atrial fibrillation, severe chronic obstructive pulmonary diseases (COPD), hypertension, and thrombophilia. *Id*. at 389. On February 3, 2010, the miner was admitted to Muhlenberg Community Hospital (MCH) with complaints of shortness of breath and was diagnosed with exacerbation of his COPD and pneumonia. Claimant's Exhibit 4. On February 9, 2010, the miner was transferred to MCH's long-term care facility for antibiotic therapy for his pneumonia. *Id*. The miner was in long-term care until February 16, 2010, when he was transferred to OMHS with complaints of chest pain, shortness of breath, and symptoms of anemia and black stools for five days. Director's Exhibit 19 at 380-882. While at OMHS, the miner was seen by a gastroenterologist, Dr. Hast, who reported that the miner had a long history of gastrointestinal issues. *Id*. The administrative law judge noted specifically that Dr. Hast acknowledged that the miner had a history of COPD but "did not relate the [m]iner's condition during this visit to his COPD" or any medication. Decision and Order at 13. The miner died at OMHS on February 16, 2010, with final diagnoses of a GI bleed, probable myocardial infarction, and atrial fibrillation with rapid ventricular response. Director's Exhibit 19-386.

due to coal dust exposure. *Id*. The administrative law judge further found that neither Dr. Rosenberg's opinion nor Dr. Tuteur's opinion supported a finding that pneumoconiosis hastened the miner's death. *Id*. at 16-17.

Claimant contends that the administrative law judge erred in finding the opinions of Drs. Chaney and Houser insufficient to satisfy her burden of proof under 20 C.F.R. §718.205(b). We disagree. With regard to Dr. Chaney, the administrative law judge noted that he prepared a report on January 4, 2011, that "reads like a checklist and is a set of questions and answers." Decision and Order at 8; Claimant's Exhibit 5. The administrative law judge observed correctly that while Dr. Chaney check-marked a box indicating that pneumoconiosis hastened the miner's death, "he did not explain his reasoning or how he arrived at his conclusion in the report."[13] Decision and Order at 14. In rejecting Dr. Chaney's opinion, the administrative law judge explained:

> Dr. Chaney acknowledged that he had no knowledge of the events leading up to the [m]iner's death and he had not treated the [m]iner for over a year prior to his death. While he testified that medications for COPD can cause GI bleeding, he had no knowledge of the medications administered to the [m]iner prior to his death.

Id. at 15. We conclude that the administrative law judge rationally discounted Dr. Chaney's opinion as not sufficiently reasoned to establish that the miner's death from a GI bleed was hastened by pneumoconiosis. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-646 (6th Cir. 2003); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

[13] As related by the administrative law judge, Dr. Chaney testified during his deposition that the miner's death was due to COPD because the miner had been treated for COPD for several years prior to his death. Decision and Order at 14; Claimant's Exhibit 5. The administrative law judge also observed that Dr. Chaney indicated that he had not reviewed the hospitalization records for the final days preceding the miner's death. Decision and Order at 14; Claimant's Exhibit 5 at 14-15. The administrative law judge further noted that Dr. Chaney indicated that the miner was prescribed Solu-Medrol during his February 9, 2010 hospital stay but was not aware of the other medications the miner was taking. Decision and Order at 15; Claimant's Exhibit 5 at 37. Finally, the administrative law judge acknowledged Dr. Chaney's statement that Solu-Medrol "can" irritate the gastrointestinal tract, although Dr. Chaney could not say whether it was the actual cause of the miner's GI bleed. Decision and Order at 15; Director's Exhibit 19.

We also see no error in the administrative law judge's assignment of less weight to Dr. Houser's opinion. Decision and Order at 15. In his report, Dr. Houser stated:

> In the absence of the end stage emphysema and clinical pneumoconiosis, [the miner] would have not required hospitalization [on] 02/03/10. COPD independently is a risk factor for ulcer disease and GI bleeding. Certainly, the use of [Solu] [M]edrol is associated with a significant increase in GI bleeding. For these reasons, I believe [the miner's] end stage COPD and clinical pneumoconiosis were significant factors which hastened his death.

Claimant's Exhibit 1. Contrary to claimant's contention, the administrative law judge permissibly determined that Dr. Houser's opinion was not reasoned because "there is no indication that Dr. Houser reviewed the treatment records" prior to the preparation of his report indicating that the miner had a history of GI problems. Decision and Order at 15; *see Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002). The administrative law judge also noted correctly that Dr. Houser acknowledged during his deposition that the miner died before a determination of the cause of the GI bleeding could be made. Decision and Order at 15. The administrative law judge reasonably found that "[o]ther than his generalized statement that COPD can be a risk factor for GI bleeding, [Dr. Houser] provided no specific findings to link the two as a cause of the [m]iner's death."[14] Decision and Order at 16; *see Groves*, 277 F.3d at 836, 22 BLR at 2-330; *Clark*, 12 BLR at 1-155.

Claimant's challenges to the administrative law judge's credibility determinations on the issue of death causation are a request that the Board reweigh the evidence, which we are not empowered to do. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We therefore affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b).[15]

[14] Because we affirm the administrative law judge's findings with regard to the weight assigned the medical opinions of Drs. Chaney and Houser, it is not necessary that we address claimant's remaining arguments with regard to the medical opinions of Drs. Tuteur and Rosenberg, as their opinions do not aid claimant in satisfying her burden of proof on the issue of death causation. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[15] We note that if the administrative law judge determines on remand that claimant is able to invoke the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis, the administrative law judge will have to specifically determine whether

Accordingly, the administrative law judge's Decision and Order is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

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the opinions of Drs. Tuteur and Rosenberg are sufficiently reasoned to affirmatively disprove that the miner's death was related to clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(2)(ii).